

August 10, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Notice of Ex Parte – MB Docket No. 14-261**
YipTV

Dear Ms. Dortch:

On Thursday, August 6, Michael Tribolet (CEO, Chairman, and Founder of YipTV), Chuck Gaspari (Founder and Chief Legal Officer, YipTV), and Monica Desai (Counsel to YipTV), met with Gigi Sohn (Counselor to the Chairman, Office of Chairman Wheeler), Maria Kirby (Legal Advisor, Office of Chairman Wheeler), and Eric Feigenbaum (Director of Outreach & Strategy, Office of Media Relations) of the Federal Communications Commission (FCC or Commission) regarding the Notice of Proposed Rulemaking (NPRM) in the above-captioned docket.¹

The purpose of the meeting was to discuss YipTV's support for the Commission's proposal to classify certain online video distributors (OVDs) that offer subscription-based linear programming as "multichannel video programming distributors" (MVPDs), provided that an individual OVD has the option to elect MVPD status or that attendant FCC-imposed obligations of such status are at least temporarily waived for nascent entrants in the OVD market.² YipTV emphasized that for itself, unless classification is optional, or the

¹ Michael Tribolet and Chuck Gaspari joined the meeting by telephone.

² *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, ¶ 17 (2014) (*MVPD Definition NPRM*) ("We also invite commenters to identify any other interpretation of MVPD that is consistent with the statute and would better serve Congressional intent. For example . . . [some] suggest that Internet-based distributors should be allowed to elect whether or not to avail themselves of MVPD status, taking on both the benefits of such status (such as program access) as well as the regulatory obligations.").

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Commission waives MVPD obligations for emerging or smaller OVDs such as YipTV, the burdens of such a classification would far outweigh any potential benefits.

YipTV streams live international television programming over the Internet to its customers. The company was just formally launched on May 7th of this year, and currently offers approximately 70 international live TV channels. Some of YipTV's current primary offerings to customers are Spanish-language and Latin American sports and news, in addition to a wide variety of popular entertainment programming available in those regions. YipTV does not require a long-term contract – customers are able to pay for the service on a month-by-month basis.

As a brand new entrant in the online video marketplace, YipTV is aware of the challenges faced by growing OVDs and fully supports and appreciates the Commission's efforts to create a regulatory framework supporting competitive opportunities for innovative providers. As the Commission has found, online distributors of video programming "offer a tangible opportunity to bring customers substantial benefits" such as "more programming choices, viewing flexibility, technological innovation and lower prices."³ YipTV embodies that opportunity – and allowing emerging services such as YipTV to flourish will magnify those important benefits, expanding viewing options and helping to drive down the cost of video services for consumers.

YipTV recognizes that for some nascent online video providers, access to broadcast- and cable-affiliated programming may be critical. Access to domestic-based broadcast- and cable-affiliated programming can enable OVDs to compete with incumbent providers, and those providers that choose to offer that type of programming should be able to avail themselves of the program access rules. For those providers, the program access rules may offer important tools that can facilitate OVD services that are a viable alternative to cable and satellite offerings.⁴

However, consumers are also opting for video services that offer unique or specialized programming that may not be available on traditional U.S. broadcast, cable or satellite systems, such as original OVD programming or, as in the case of YipTV, streaming of real-time international programming.

For YipTV and perhaps for other OVDs that are not relying on US broadcast content or current MVPD offerings, the program access rules do not afford sufficient benefit to counterbalance the attendant obligations of MVPD status. For YipTV, classification as an MVPD will bring substantial costs that may limit its ability to obtain new programming – thus reducing the programming choices available to consumers – and likely increasing the end-cost of its service.

³ *Comcast Corporation, General Electric Company and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4268-69, ¶ 78 (2011) (*Comcast/NBCU Order*); *MVPD Definition NPRM* fn. 106.

⁴ *MVPD Definition NPRM* ¶ 25.

Recognizing, then, that the benefits and obligations of MVPD status are measured differently by each provider, YipTV encourages the Commission, if it adopts the proposed expanded definition, to allow OVDs to elect MVPD status. Alternatively, the Commission could waive MVPD obligations for certain categories of companies.

An elective approach or a waiver approach reduces the initial hurdles to entry into the video marketplace for new entrants that provide varied and unique service offerings. As stated by Commissioner Rosenworcel, the ability to elect MVPD status – an approach the Commissioner recommended – will allow OVDs to “avoid the legal conundrum involved in determining the regulatory status of novel services, seeking regulatory exemption, or pursuing a waiver of our rules before launching in the market.”⁵ A waiver approach would accomplish the same goal and would, as the Commission stated in the NPRM, “limit the burdens [of MVPD status] on small entities.”⁶

The obligations of MVPD status are substantial.⁷ The FCC should provide a waiver or exemption from those MVPD obligations for emerging OVDs that do not stream US broadcast channels or cable-affiliated programming. That narrow class of OVDs are already subject to the requirements applicable to Internet-based distributors of video programming, and would obtain zero benefit from being classified as an MVPD – and therefore should not be saddled with the associated burdens.⁸

Affording providers the choice of whether to avail themselves of MVPD status, or providing at least temporary relief from costly obligations to emerging OVDs so as to promote entry into the market, will allow the OVD market to continue to grow and diversify – to the benefit of consumers. Otherwise, the Commission will harm the very competition and consumer choice that the Commission is intending to support.

⁵ *MVPD Definition NPRM*, Statement of Commissioner Jessica Rosenworcel.

⁶ *MVPD Definition NPRM* ¶ 25.

⁷ The obligations of MVPD status include requirements related to program carriage (47 C.F.R. § 76.1301); retransmission consent (47 C.F.R. §§ 76.64, 76.65); closed captioning (47 C.F.R. § 79.1); video description (47 C.F.R. § 79.3); accessibility of emergency information (47 C.F.R. §§ 79.2, 79.105); accessibility of user interfaces, guides and menus (47 C.F.R. § 79.108); equal employment opportunities (47 C.F.R. §§ 76.71, 76.73, 76.75, 76.77, 76.1702, 76.1802); attachment of navigation devices (47 C.F.R. §§ 76.1201-1204); signal leakage (47 C.F.R. § 76.605); inside wiring (47 C.F.R. §§ 76.5(11), 76.800(d)); commercial loudness (47 C.F.R. § 76.607); and access to Multiple Dwelling Units (47 C.F.R. § 76.2000(a)).

⁸ OVDs are already subject, for example, to separate closed captioning obligations for video delivered via IP under 47 C.F.R. § 79.4.

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Respectfully submitted,



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